

Message Text

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ACTION EA-10

INFO OCT-01 ISO-00 PM-03 L-03 CIAE-00 INR-07 NSAE-00 SIL-01

/025 W

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R 160735Z JUN 75

FM AMEMBASSY MANILA

TO SECSTATE WASHDC 4460

DEPT NAVY WASHDC

OCMM WASHDC

OSAF WASHDC

CSAF (JACI)

CINCPAC

CINCPACAF

CINCPACFLT

CINCPACREPPHIL

CDR 13TH AIR FORCE CLARK

ROCMH PEARL HARBOR

C O N F I D E N T I A L SECTION 1 OF 2 MANILA 8171

E.O. 11652: GDS

TAGS: MARR, ELAB, RP

SUBJECT: US/RP BASE LABOR AGREEMENT

REF: (A) CINCPACREPPHIL MSG 290813Z MAY 75

(B) CINCPAC MSG 072031Z JUN 75

(C) STATE 137254 DTG 121506Z JUN 75

SUMMARY: EMB PROVIDES COMMENTS ON JUNE 75 REFTELS AS REQUESTED
REF C AND STRESSES REASONS TO ACCOMMODATE BASE LABOR
FEDERATION AND GOP IN THEIR
EXPRESSED DESIRE TO HAVE NON-VOLUNTARY CHECK-OFF
OF UNION DUES EQUIVALENT. EMB RENEWS ITS REQUEST
FOR AUTHORITY TO AMEND BASE LABOR AGREEMENT. END SUMMARY

1. REFERENCES HAVE SOUGHT TO MAKE THE BASIC CASE (PARA
3 REF B) THAT AMENDING THE 1968 US/RP BASES LABOR AGREE-
MENT TO MAKE IT SILENT ON THE ISSUE OF WHETHER THERE
SHOULD BE VOLUNTARY OR INVOLUNTARY CHECK-OFF OF UNION
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DUES WOULD OPEN THE DOOR FOR FURTHER CHANGES IN OTHER

AREAS IN WHICH IT IS KNOWN THAT UNIONS HAVE VERY STRONG FEELINGS. AS REF B RECAPITULATED THOSE DESIDERATA, THEY ARE: (1) OBTAINING RIGHT TO SGRIKE; (2) COMPULSORY ABRITRATION ON GRIEVANCES AND APPEALS, AND (3) STRENGTHENING EMPLOYMENT OF FILOPIONS OVER AMERICANS.

2. INVOCATION THESE ISSUES EXTRANEEOUS TO CONSIDERATION OF PROBLEM AT HAND. AS ADDRESSEES AWARE, MARTIAL LAW ADMINISTRATION FORBIDS STRIKES AND GOP NOT LIKELY TO SUPPORT FEDERATION NOW IN OBTAINING SUCH RIGHT. MOREOVER, UNDER PRE-MARTIAL LAW CIRCUMSTANCES, DURING CLARK STRIKES OF 1971, COP WAS CLEARLY UNEASY OVER CLEAR VIOLATION OF BLA THIS REPRESENTED. RE COMPULSORY ARBITRATION, AGAIN, GOP AWARE THAT USG CANNOT AGREE TO BIND ITSELF TO ACCEPT COMPULSORY ARBITRATION. US/RP JOINT COMMITTEE ACTIONS ON ADVISORY ARBITRATION APPEALS HAVE CONSISTENTLY SUPPORTED REJECTIONS BY MANAGEMENT OF DUBIOUS ARBITRATION FINDINGS. EMB WILL AWARE FEDERATION UNHAPPY ABOUT SUCH REJECTIONS, BUT THERE NO INDICATION GOP INTENDS TO TAKE UP CUDGELS ON FEDERATION'S BEHALF ON THIS TRICKY ISSUE. FINALLY, NOTWITHSTANDING DESIRE TO SEE FILIPINOS TAKE ALL POSSIBLE JOBS AT BASES, PRINCIPLE OF QUOTE SPECIAL MANAGMENTSNEEDS UNQUOTE ENSHHRINED IN BLA UNDER WHICH AMERICANS EMPLOYED HAS NOT BEEN QUESTIONED BY GOP. IN SUM, USG POSITION ON THE SPECTRES RAISED BY CINCPAC IS STRONG AND THE BASIC ISSUES INVOLVED IN THE THREE CITED AREAS ARE NON-NEGOTIABLE. THIS DOES NOT MEAN BLA IS INVIOLETE OR THAT THIS 1968 DOCUMENT MEETS ALL NEEDS OF EITHER MANAGEMENT OR UNIONS IN 1975. IN SHORT, THE QUESTION OF AMENDING THE BLA TO MAKE IT SILENT ON HOW CHECK-OFF SHOULD BE ACCOMPLOSHED SHOULD BE LOOKED AT ON ITS OWN MERITS AND NOT VIEWED AS THE BEGINNING OF THE CAVE-IN OF THE BLA.

3. AS NOTED IN MANILA 7170 DTG 260336Z MAY 75. THE NEW PHILIPPINE LABOR CODE IS DESIGNED TO ENCOURAGE THE GROWTH OF THE AGENCY SHOP, AND IT WAS STATED IN THIS REFERENCE THAT THERE WAS NO APPARENT CONFLICT IN THE TWO COUNTRIES NATIONAL LAWS ON THIS QUESTION THAT WOULD REQUIRE THE CONFIDENTIAL

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BLA TO SPECIFY THE MODE OF CHECK-OFF. REF A CITES 5 USG 7301, SEC 21, AS PROHIBITING NON-VOLUNTARY CHECK-OFF. THIS IS MISLEADING. 5 USG 7301 MERELY ALLOWS THE PRESIDENT TO PRESCRIBE REGULATIONS FOR CONDUCT OF EMPLOYEES IN THE EXECUTIVE BRANCH. SEC 21 IS PART OF EXECUTIVE ORDER 11491 PROMULGATED PURSUANT TO 5 USG 7301. AN EXECUTIVE ORDER DOES NOT HAVE THE SAME STATUS AS A CONGRESSIONAL ACT. BLA REFERS TO THE NATIONAL LAWS OF

EACH COUNTRY, NOT REGULATIONS OR EXECUTIVE ORDERS. AN EXECUTIVE ORDER WHICH PROMULGATES REGULATIONS IS NOT WHAT IS CONTEMPLATED BY THE LANGUAGE IN THE BLA.

4. ON THIS ISSUE, REFB CITES 5 USC 552T SYS: QUOTE THE HEAD OF EACH AGENCY MAY ESTABLISH PROCEDURES UNDER WHICH EACH EMPLOYEE OF THE AGENCY IS PERMITTED TO MAKE ALLOTMENTS AND ASSIGNMENT OF AMOUNTS OF HIS PAY FOR SUCH PURPOSE AS THE HEAD OF AGENCY CONSIDERS APPROPRIATE. UNQUOTE WE DO NOT HOLD COMPTROLLER GENERAL DECISIONS, HOWEVER, IT IS DOUBTFUL THAT SUCH AN INTERPRETATION WOULD BE APPLICABLE TO THE OPERATION OF AN INTERNATIONAL AGREEMENT.

5. RE THE COMPENSATION BENEFITS OBTAINED BY NON-UNION MEMBERS (PARA 2 REF A), EMB AGREES THAT COMPENSATION ITEMS ARE NOT RESULT OF NEGOTIATION WITH UNION BUT ARE ESTABLISHED BY SURVEY OF PREVAILING PRACTICES. HOWEVER, THE CBA CONTAINS MANY PROVISIONS WHICH RESULT IN DIRECT PRIVILEGES, OBLIGATIONS AND CONDITIONS OF WORK FOR ALL DIRECT HIRE FILIPINO EMPLOYEES AT BASES. THEREFORE, THERE ARE BENEFITS TO AND QUOTE FREE LOADING UNQUOTE BY NON-UNION MEMBERS. SUGGESTION IN REFTEL THAT NON-UNION EMPLOYEES COULD THEORETICALLY WAIVE SUCH BENEFITS SEEMS ABSURD.

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ACTION EA-10

INFO OCT-01 ISO-00 L-03 CIAE-00 INR-07 NSAE-00 SIL-01 PM-03

/025 W

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FM AMEMBASSY MANILA
TO SECSTATE WASHDC 4461
DEPT NAVY WASHDC
OCMM WASHDC
OSAF WASHDC
CSAF (JACI)
CINCPAC
CINCPACAF

CINCPACFLT
CINCPACREPPHIL
CDR 13TH AIR FORCE CLARK
ROCMH PEARL HARBOR

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6. RE PARA 5 REF A, WHILE EMB NOT FAMILIAR WITH US BASES LABOR SITUATION IN AUSTRALIA, IT WOULD APPEAR THE CHARITY CHECK-OFF CONCEPT WOULD HAVE LITTLE OR NO MEANING IN THE CULTURAL CONTEXT OF THE PHILIPPINES. MOREOVER, IT WOULD NOT MEET THE NEEDS OF THE FEDERATION, NEITHER WOULD IT SATISFY THE GOP NATIONAL POLICY OF ENCOURAGING THE GROWTH OF THE AGENCY SHOP.

7. RE PARA 6 REF A, EMB AGREES THAT DEFT HANDLING OF CHECK-OFF QUESTION COULD POSSIBLY BE POTENT CARD IN NEGOTIATIONS. IT IS FOR THAT REASON EMB BELIEVES IMPORTANT TO HAVE AUTHORITY TO AMEND IN HAND. ONCE AUTHORITY IS OBTAINED, TIMING THEN CAN BE USED TO OUR BENEFIT. US NEGOTIATIONS WOULD THEN BE IN POSITION TO KNOW WHAT AUTHORITY THEY HAVE AND HOW BEST TO UTILIZE IT IN COORDINATION WITH EMB. FOR EXAMPLE, US NEGOTIATORS COULD OBTAIN QUID PRO QUO BY STATING THEY WOULD BE WILLING TO RECOMMEND TO EMB AMENDMENT OF BLA TO ALLOW CONFIDENTIAL

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NON-VOLUNTARY CHECK-OFF IN RETURN FOR SUITABLE AGREEMENT ON OTHER POINTS.

8. RE PARA 7 REF A, EMB FAILS TO APPRECIATE THE CONCERN EVIDENCED AT THIS TIME IN THE COMMENT IN REFTTEL THAT DUES CHECK-OFF RAISES MAJOR ISSUE OF SUPERVISORS AS MEMBERS OF THE UNION. THIS HAS BEEN A LONG STANDING POTENTIAL ISSUE WITH NO CONNECTION TO THE PRESENT QUESTION OF CHECK-OFF. NEW LABOR CODE PROHIBITS MANAGERIAL PERSONNEL FROM BEING MEMBERS OF A UNION (ART. 245) AS DID THE PRIOR PHIL LAW. MANAGERIAL EMPLOYEE IS DEFINED IN BOOK V, RULE 1(M) OF RULES AND REGULATIONS IMPLEMENTING THE NEW LABOR CODE. THE PRESENT CBA IN ART II, SEC 1, ALSO PROHIBITS CERTAIN MANAGERIAL AND SUPERVISORY PERSONNEL FROM HOLDING UNION OFFICES. IT WOULD APPEAR BOTH THE CBA AND THE NEW LABOR CODE ARE FAIRLY CONSISTENT IN THIS RESPECT. THEREFORE EITHER THE BASES, THE RANK AND FILE MEMBERS OF THE GOP COULD OBJECT TO SUCH MANAGERS OR SUPERVISORS HOLDING UNION OFFICES. THE BLA IS SOLENT ON THIS MATTER EXCEPT IN ART II(2) WHERE THE LANGUAGE STATES THAT UNION ORGANIZATION DULY REGISTERED WITH THE GOP WILL BE RECOGNIZED BY UNITED STATES ARMED FORCES AS THE BARGAINING REPRESENTATIVES.

THIS LANGUAGE IMPLIES THAT SUCH A REGISTERED UNION WOULD IP SO FACTO NEED TO HAVE FULLY COMPLIED WITH PHIL LAW BEFORE REGISTRATION WOULD BE GRANTED. HOWEVR, OBVIOUSLY THE GOP REGARDS THE BASES UNIONS DIFFERENTLY FROM OTHER UNIONS; BUT IT COULD, IF IT WISHED, CEASE ITS TOLERANCE OF SUPERVISORY OR MANAGERIAL UNION OFFICERS BY REVOKING THE UNION'S REGISTRATION AT ANY TIME. UNDER THE CBA IT IS ASSUMED THE BASES COULD ALSO QUESTION THE RECOGNITION OF SUCH UNION LEADERSHIP UNDER THE CITED CBA ARTICLE. HOWEVER, ALL PARTIES IN THE PAST APPEAR TO HAVE TOLERATED THIS ANOMALY. AS RECENTLY AS MAY 2, 1975, DURING COURSE Q & A SESSION WITH PARTICIPANTS (U.S.) OF 1975 COLLECTIVE BARGAINING AGREEMENT NEGOTIATIONS SEMINAR AT BAGUIO, LABOR UNDERSECRETARY AMADO INCIONG INDICATED BOP WILLINGNESS CONTINUE QUOTE OLD ARRANGEMENT UNQUOTE WHICH IN EFFECT SUSPENDED PROVISION PROHIBITING SUPERVISORS JOINING RANK AND FILE UNIONS. CONFIDENTIAL

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WITH RESPECT THIS QUOTE SPECIAL SITUATION UNQUOTE ON BASES, INCIONG SAID: QUOTE IN OTHER WORLDS WE WILL CLOSE OUR EYES AND NOT ENFORCE THE PROHIBITION AGAINST MANAGERIAL EMPLOYEES SERVING AS OFFICERS OF THE FEDERATION AND THE LOCAL UNIONS. UNQUOTE IN ANY CASE, THIS ISSUE IS TANGERNTIAL T THE PROBLEM AT THAND AND COULD BE AN ISSUE OR NON-ISSUE IRRESPECTIVE OF THE CHEK-OFF PROBLEM.

9. RE PARA 8 REF A, EMB DOES NOT KNOW WHAT GROUNDS EXIST FOR ASSERTION THAT QUOTE THE BASES BELIEVE THAT THE PRESSURES BEING GENERATED ARE KNOWN BY THE GOP TO BE WITHOUT SUBSTANTIVE MERIT. UNQUOTE THE EMB STRONGLY BELIEVES FROM ITS CONTACTS WITH THE DEPT OF LABOR THAT GOP VERY SERIOUSLY INTERESTED IN THIS QUESTION FROM AN OVERALL POLICY POINT OF VIEW AND APPEARS WILLING TO GO TO MAT IN SUPPORTING FEDERATION ON THIS MATTER. THEREFORE, TO RISK A USG-GOP CONFRONTATION ON THIS MATTER OF AN OPEN OR AN AGENCY SHOP FOR FILIPINO OWRKERS AT US BASES IN THE PHILIPPINES IS RECKLESS AND UNNECESSARY.

10. REQUEST AUTHORITY TO AMEND BLA BE PROVIDED AS REQUESTED IN MANILA 7170 DTG 260336Z MAY 1975. PURNELL

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